

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INTERNATIONAL BROTHERHOOD
 OF TEAMSTERS, AIRLINE DIVISION, *et al.*,

Plaintiffs,

vs.

ALLEGIANT TRAVEL COMPANY,
 and ALLEGIANT AIR, LLC,

Defendants.

Case No. 2:14-cv-00043-APG-GWF

ORDER

Motion to Compel - #97

This matter is before the Court on Defendants' Motion to Compel Responses to Written Discovery (#97), filed on September 5, 2014. Plaintiff filed its Response (#105) on September 22, 2014 and Defendants filed their Reply (#110) on September 29, 2014. The Court conducted a hearing on this motion on October 9, 2014.

BACKGROUND

Plaintiff International Brotherhood of Teamsters, Airline Division/Airline Professionals Association of the International Brotherhood of Teamsters, Local Union No. 1224 (hereinafter "IBT" or "Union") alleges that it is the exclusive bargaining "representative," as defined by the Railway Labor Act ("RLA"), 45 U.S.C. § 151, Sixth, of the pilots employed by Defendant Allegiant Air. *Complaint* (#1), ¶ 4. The Union alleges that it was certified as the Allegiant pilots' exclusive bargaining representative by the National Mediation Board ("NMB") on August 24, 2012. ¶¶ 4, 8. Prior to that date, the pilots were represented by the "Allegiant Air Pilots Advocacy Group" ("AAPAG"). ¶ 8. In 2010, the AAPAG and Allegiant allegedly negotiated changes to a collective bargaining agreement titled "Pilot Work Rules" (PWR). The Pilot Work Rules "contained detailed provisions governing seniority, compensation, training, work scheduling, vacation and paid time off,

1 leaves of absence, pay during illness, grievance processing, discipline, uniforms, and automation.” ¶
2 12.

3 The Union alleges that after it replaced the AAPAG as the exclusive bargaining
4 representative of the pilots, it advised Allegiant of its intention to negotiate a new collective
5 bargaining agreement governing the pilots’ rates of pay, benefits, work rules and other terms of
6 employment. The Union and Allegiant have been in contract negotiations since December 2012.
7 *Id.*, ¶ 15. The Union alleges that Allegiant has violated the Railway Labor Act and breached the pre-
8 existing collective bargaining agreement by unilaterally eliminating or changing specific provisions
9 of the Pilot Work Rules described in ¶ 12 of the complaint, and by announcing its intention to
10 unilaterally implement an entirely new and dramatically different flight scheduling system. The
11 Union requests that the Court require Allegiant to restore and maintain the provisions of the Pilot
12 Work Rules while the parties negotiate a new agreement, and/or engage in proceedings before the
13 National Mediation Board. The Union also requests that Allegiant be ordered “to make whole each
14 Allegiant pilot harmed by Defendants’ breaches of the Allegiant-AAPAG pilot collective bargaining
15 agreement and status quo.” *Complaint (#1)*, pg. 13.

16 The Union filed its motion for preliminary injunction on March 3, 2014. In its opposition to
17 that motion, Allegiant denied that the AAPAG was the pilots’ collective bargaining representative or
18 that the Pilot Work Rules constitute a binding collective bargaining agreement. Allegiant alleged
19 that when the Union applied in June 2012 to represent the pilots, it certified to the National
20 Mediation Board that the pilots were unrepresented and not subject to a collective bargaining
21 agreement; and that based on this representation, the National Mediation Board conducted a
22 representation election. Allegiant further alleges that the Union told the pilots they must vote for the
23 Union because they were not represented and did not have a valid collective bargaining agreement.
24 Allegiant also argued that the Pilot Work Rules state that it is not a contract and that any disputes as
25 to how it is interpreted are decided exclusively by Allegiant. *Opposition to Motion for Preliminary*
26 *Injunction (#53)*, pgs. 1-2.

27 On July 22, 2014, the Court granted the Union’s motion for preliminary injunction. *Order*
28 *(#79)*. The Court noted that the Railway Labor Act “defines the term ‘representative’ as ‘any person

1 or persons, labor union, organization, or corporation designated by either a carrier or group of
 2 carriers or by its or their employees to act for it or them.” *Order (#79), pg. 11*. The Court stated:

3 Under this definition, AAPAG was the pilots’ representative. The
 4 pilots voted to create AAPAG. The preamble to AAPAG’s
 5 Constitution and Bylaws states that the Constitution and Bylaws
 6 “provide [] the mechanism through which all member pilots are
 7 represented both individually and collectively.” One of AAPAG’s
 8 objectives, as stated in its Constitution and Bylaws, is “to make,
 9 determine, negotiate, maintain and/or improve employment
 10 agreements covering rates of compensation, hours of employment,
 11 work rules, benefits and working conditions for the members of the
 12 Association.” This language certainly indicates that the pilots
 13 designated AAPAG to act for them. On Allegiant’s side, the Chief
 14 Executive Officer (“CEO”), Maury Gallagher, stated in an open letter
 15 dated December 17, 2009 to Allegiant’s pilots that “Management has a
 16 history of compromise with AAPAG” and that “Allegiant pilots have
 17 made significant gains in every new contract since 2001,” indicating
 18 that at least the CEO believed that Allegiant and AAPAG had formed
 19 binding contracts for the pilots. Most importantly, the PWR, which
 20 was executed by Allegiant’s Vice President of Flight Operations,
 21 recognizes AAPAG as “the elected and representative body of the pilot
 22 group of Allegiant Air.”

23 *Order (#79), pgs. 11-12.*

24 The Court found that statements made by the Union before it was certified as the pilot’s
 25 bargaining representative were not binding because the Union “did not yet represent the pilots and its
 26 statements cannot be imputed to them.” The Court further stated that “[t]o the extent IBT made any
 27 post-certification statements concerning AAPAG’s pre-certification status, IBT was not present
 28 during AAPAG’s creation or during the years of AAPAG’s relationship with Allegiant. It is thus
 dubious that IBT had sufficient information to determine whether AAPAG was the pilots’ RLA
 representative, nor could IBT’s statements serve to retroactively revoke AAPAG’s prior
 representative status.” *Order (#79), pg. 12*. The Court applied the same logic “to the IBT’s
 application for NMB certification, which failed to indicate that AAPAG was the pilots’
 representative or that the pilots had an extant agreement.” The Court stated that “[t]his application
 was obviously prepared before the IBT was certified. That no one corrected the IBT’s on-site
 posting of the NMB application is of little moment, as it is unclear how many people saw or read the
 posting, and the presumptive focus of those who did read it would have been to make sure that the
 IBT was acting properly to become certified rather than whether the IBT had misstated AAPAG’s

1 status.” *Id.*

2 The Court also rejected Allegiant’s arguments that statements in a March 2012 AAPAG
3 union organizing pamphlet demonstrated AAPAG’s recognition that it did not have a binding
4 agreement with Allegiant. The Court stated that the parties’ subjective characterization of a
5 document is not dispositive and that “it would be unreasonable to conclude that these statements by
6 AAPAG served to repudiate the PWR such that is [sic] was no longer binding after March 2012.”
7 *Id. pg. 13.* The Court also rejected Allegiant’s argument that its dealings with AAPAG did not
8 convert AAPAG into an RLA representative, noting that the argument “conveniently ignores that
9 Allegiant did precisely that in the PWR, by recognizing AAPAG as “the elected and representative
10 body of the pilot group of Allegiant Air.”” *Id.* The Court also held that the statements in the PWR,
11 that it did not give rise to a contract or promise of employment for any period of time, did not refute
12 its status as an RLA agreement. *Id. pg. 14.*

13 Allegiant continues to assert that AAPAG was not the collective bargaining representative for
14 the pilots and that the Pilot Work Rules were not a binding collective bargaining agreement. Prior to
15 the injunction hearing, Allegiant served interrogatories and requests for production of documents
16 relating to its defenses. The Union responded to Allegiant’s discovery requests after the injunction
17 hearing. The Union objected to many of the discovery requests. In some instances, the Union
18 referred the Defendant to documents it produced during the injunction hearing. In other instances, it
19 indicated that it would supplement its discovery responses as it obtained additional documents or
20 information. Allegiant argues that the Union’s objections are invalid and that the Union has not
21 produced relevant and responsive information and documents within its knowledge, possession,
22 custody or control. It therefore seeks an order compelling further responses. The disputed
23 interrogatories and requests for production are set forth in the Appendix to this order.

24 Allegiant also moved to compel the Union to produce documents relating to the alleged harm
25 or damages suffered by individual pilots as a result of Allegiant’s elimination or modification of the
26 Pilot Work Rules. Following the October 9, 2014 hearing, the parties reached an agreement
27 regarding the scope of the damages or restitution the Union is seeking on behalf of the pilots. The
28 parties also agreed on the information and documents the Union would produce with respect to those

1 claims. *See Joint Status Report Regarding Damages Issue (#116).*

2 DISCUSSION

3 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that a party may obtain
4 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.
5 Relevancy under the rule is liberally construed. *Philips v. Clark County School District*, 2012 WL
6 135705, *4 (D.Nev. 2012), citing *E.E.O.C. v. Caesars Entertainment, Inc.*, 237 F.R.D. 428, 431-32
7 (D.Nev. 2006). The party opposing discovery has the burden of showing that the discovery is overly
8 broad, unduly burdensome or not relevant. *Graham v. Casey's General Stores*, 206 F.R.D. 251,
9 253-4 (S.D.Ind. 2000). To meet this burden, the objecting party must specifically detail the reasons
10 why each request is irrelevant. *Id.*, citing *Schaap v. Executive Indus., Inc.*, 130 F.R.D. 384, 387
11 (N.D.Ill. 1990); *Walker v. Lakewood Condominium Owners Assoc.*, 186 F.R.D. 584, 587 (C.D.Cal.
12 1999). When a request for discovery is overly broad on its face or when relevancy is not readily
13 apparent, however, the party seeking the discovery has the burden to show the relevancy of the
14 request. *Rezaq v. Nalley*, 264 F.R.D. 653, 656 (D.Colo. 2010).

15 "A party is generally charged with knowledge of what its agents know, or what is in records
16 available to it, or even information others have given to it on which it intends to rely in its suit. A
17 party cannot limit its interrogatory answers to matters within its own knowledge and ignore
18 information immediately available to it or under its control." *F.D.I.C. v. Halpern*, 271 F.R.D. 191,
19 193 (D. Nev. 2010), citing 8B Wright, Miller & Marcus, *Federal Practice and Procedure* § 2177
20 (3rd Ed. 2010) (and cases cited therein). Likewise, "[a] party must produce nonprivileged relevant
21 documents in response to a request for production that are in the producing party's possession,
22 custody or control." *Id.*, citing Fed.R.Civ.Pro. 34(a)(1).

23 Although the preliminary injunction order rejected Allegiant's arguments that AAPAG was
24 not the pilot's collective bargaining representative and the Pilot Work Rules were not a collective
25 bargaining agreement, the Court has not conclusively decided these issues. Without commenting on
26 what evidence, if any, might be sufficient to overcome the Court's preliminary determination,
27 evidence showing that the AAPAG's officers or the Allegiant pilots did not consider the AAPAG to
28 be the pilots' collective bargaining representative and did not consider the Pilot Work Rules to be a

1 binding agreement are relevant to the defenses raised by Allegiant. Likewise, evidence showing that
2 the AAPAG did not conduct itself in the manner of a union, such as by requiring and collecting dues
3 from members, is also relevant and potentially admissible.

4 Allegiant's interrogatories request all communications between the Union and the Allegiant
5 pilots during the Union's organizing drive, and all communications between the Union and any
6 officer or representative of AAPAG. *See Interrogatory Nos. 8 and 9.* Allegiant also requests "all
7 documents referring or relating to AAPAG and/or the PWR, including but not limited to: . . ."
8 *Request No. 9.* These requests are over broad on their face to the extent they are not limited to
9 documents relating to AAPAG's representative status or whether the Pilot Work Rules was a binding
10 collective bargaining agreement. Although most of the subparts in Request No. 9 do relate to these
11 issues, subparts (k), (l) and (m) broadly requests all minutes of AAPAG membership and committee
12 meetings without any limitation on the subject matter discussed. While the minutes may contain
13 information relevant to Allegiant's defenses, they may also contain other information such as the
14 identities of individual AAPAG members that may be protected from disclosure pursuant to the
15 members' First Amendment right of association.

16 The AAPAG is apparently a defunct organization. There is no evidence that the Union has
17 possession, custody or control of all of AAPAG's records. In its response to Request No. 9,
18 however, the Union stated that it possesses "certain documents that are covered by this Request." To
19 the extent that the Union possesses AAPAG documents relevant to its status as the pilots' collective
20 bargaining representative or to whether the Pilot Work Rules were a binding agreement that have not
21 already been produced to Allegiant, such documents should be produced absent a valid assertion of
22 privilege.

23 **A. Union's Objection Based on First Amendment Privilege.**

24 Allegiant's Interrogatory No. 3 requests the identities "of all individuals who were members
25 of the Plaintiff's Allegiant Air pilots organizing committee." As discussed above, Request No. 9
26 requests production of all documents referring or relating to AAPAG and/or the PWR, including
27 records relating to AAPAG's dues and the minutes of AAPAG's membership meetings and
28 committee meetings. Request No. 15 seeks all documents relating to the Union's allegation that the

1 AAPAG collected dues from its member pilots and represented their interests against Allegiant.

2 The Union objected to Interrogatory No. 3 and Request Nos. 9 and 15, on the grounds that
 3 they are “calculated to subject the Allegiant pilots to harassment and intimidation, in that it has the
 4 effect of invading, intruding into and chilling their statutorily protected rights under the RLA and
 5 their privacy interests.” *See Motion (#97), Exhibit 1, Response to Request No. 9.* The Union
 6 expanded upon this objection in its response to Allegiant’s motion to compel. *See Response (#105),*
 7 *pgs. 9-10.* The Union states that its objection is predicated on the First Amendment right of freedom
 8 to assemble or associate, which includes the right of the members of an association to keep their
 9 membership anonymous or private, absent the showing of a compelling state interest to overcome
 10 that right. In this regard, the Union cites *NAACP v. State of Alabama, ex rel. Patterson*, 357 U.S.
 11 449, 462, 78 S.Ct. 1163 (1958) in which the Supreme Court struck down a state court order holding
 12 the NAACP in contempt for refusing to provide its membership list to the state. The Court stated
 13 that the NAACP sufficiently demonstrated the chilling effect that the disclosure of its members’
 14 identities would have on the exercise of their First Amendment rights if their identities were
 15 disclosed. The Court rejected the state’s argument that “whatever repressive effect compulsory
 16 disclosure” had on the association’s members “follows not from *state* action, but from *private*
 17 community pressures.” The Court stated that “[t]he crucial factor is the interplay of governmental
 18 and private action, for it is only after the initial exercise of state power represented by the production
 19 order that private action takes hold.” 357 U.S. at 463, 78 S.Ct. at 1172.

20 Courts since *NAACP v. State of Alabama, ex rel. Patterson* have held that the First
 21 Amendment privilege may apply even if all of the litigants are private entities. *Perry v.*
 22 *Schwarzenegger*, 591 F.3d 1126, 1140, n. 5 (9th Cir. 2010), citing *Grandbouche v. Clancy*, 825 F.2d
 23 1463, 1466 (10th Cir. 1987) and *Adolph Coors Co. v. Wallace*, 570 F.Supp. 202, 208 (N.D.Cal.
 24 1983).” In *Grandbouche*, the plaintiff sued individual IRS employees who allegedly infiltrated an
 25 organization that espoused dissident views on the federal income tax system. The defendants
 26 requested production of the organization’s membership list, the mailing list for recipients of its
 27 publications, and a list of members or others who attended the organization’s convention. In holding
 28 that the First Amendment privilege applied, the court stated that the magistrate’s order compelling

1 discovery and the trial court's enforcement of that order provided the requisite governmental action
 2 to invoke First Amendment scrutiny. The court in *Adolph Coors Co. v. Wallace*, 570 F.Supp. at 208,
 3 stated that "a private litigant is entitled to as much solicitude to its constitutional guarantees of
 4 freedom of association when challenged by another private party, as when challenged by a
 5 government body."

6 A claim of First Amendment privilege is subject to a two part framework. The party
 7 asserting the privilege must demonstrate a *prima facie* showing of arguable First Amendment
 8 infringement. *Perry v. Schwarzenegger*, 591 F.3d at 1140, citing *Brock v. Local Union 375*,
 9 *Plumbers Int'l Union of America*, 860 F.2d 346 (9th Cir. 1988) ("*Plumbers I*"). The party must
 10 show that disclosure would result in (1) harassment, membership withdrawal, or discouragement of
 11 new members, or (2) other consequences which objectively suggest an impact on, or chilling of
 12 members' associational rights. The court in *Brock* noted that "[m]any courts have grappled with the
 13 sufficiency of the party's *prima facie* showing. (Citations omitted). The court stated:

14 A factor emphasized in each of those decisions is the need for
 15 objective and articulable facts, which go beyond broad allegations and
 16 subjective fears. The Supreme Court, in *Buckley v. Valeo*, seemed to
 17 suggest that a merely subjective fear of future reprisals is an
 18 insufficient showing of infringement of associational rights. 424 U.S.
 19 at 71-72, 96 S.Ct. at 660. However, the *Buckley* court also recognized
 20 that "unduly strict requirements of proof could impose a heavy burden.
 21 . . ." The Court therefore required that the "evidence offered need
 show only a reasonable probability that the compelled disclosure . . .
 subject [contributors] to threats, harassment, or reprisals from either
 Government officials or private parties. *Id.* at 74, 96 S.Ct. at 661. *See*
also Brown v. Socialist Workers '74 Campaign Committee, 459 U.S.
 87, 93, 103 S.Ct. 416, 421, 74 L.Ed.2d 250 (1982); *In re Grand Jury*
Proceeding, 842 F.2d at 1235-36; *O'Neal v. United States*, 601
 F.Supp. at 879.

22 *Dole v. Service Employees Union*, 950 F.2d 1456, 1460 (9th Cir. 1991) provides an example
 23 of the type of evidence that suffices to establish the *prima facie* case. In *Dole*, the union objected to
 24 a Department of Labor subpoena for its membership meeting minutes which were sought pursuant a
 25 government investigation into corruption by union officials. The court held that the union satisfied
 26 its *prima facie* case by showing that the members discussed sensitive and private topics during the
 27 meetings and by producing two letters from union members stating that they would no longer attend
 28 meetings if the minutes were disclosed to the government.

Once the party asserting the privilege makes the *prima facie* showing, the burden then shifts to the party seeking to compel disclosure to show (1) that the information sought is rationally related to a compelling interest, and (2) that the disclosure requirements are the least restrictive means of obtaining the desired information. *Perry v. Schwarzenegger*, 591 F.3d at 1140, citing *Dole v. Service Employees Union, AFL-CIO, Local 280*, 950 F.2d 1456, 1459-61 (9th Cir. 1991). *Perry* states the second step of the analysis is meant to make discovery that impacts First Amendment associational rights available only after a careful consideration of the need for such discovery. The court must determine whether the party seeking the discovery “has demonstrated an interest in obtaining the disclosures it seeks . . . which is sufficient to justify the deterrent effect . . . on the free exercise . . . of [the] constitutionally protected right of association.” *NAACP*, 357 U.S. at 463, 78 S.Ct. 1163.” To implement this standard, the court balances the burdens imposed on the individuals and associations against the significance of the interest in disclosure to determine whether the interest in disclosure outweighs the harm. *Id.* The balancing may take into account the importance of the litigation; the centrality of the information sought to the issues in the case; the existence of less intrusive means of obtaining the information; and the substantiality of the First Amendment issues at stake. *Perry*, 591 F.3d at 1140-41. *Perry* further states:

Importantly, the party seeking the discovery must show that the information sought is highly relevant to the claims and defenses in the litigation—a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1). The request must also be carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable.

591 F.3d at 1141.

Other courts have provided varying formulations of the factors to be considered consistent with those identified in *Perry*. See also *Grandbouche v. Clancy*, 825 F.2d 1463, 1466-67 (10th Cir. 1987); *Adolph Coors Co. v. Wallace*, 570 F.Supp.202, 208 (N.D.Cal. 1983); and *Christ Covenant Church v. Town of Southwest Ranches*, 2008 WL 2686860, *8 (S.D.Fla. 2008).

The Union also bases its objection to Allegiant’s requests on decisions by the National Labor Relations Board (NLRB) and appellate decisions which state that it is an unfair labor practice for an employer to attempt to obtain the minutes of union membership meetings or the identities of

1 employees who have signed union representation cards, because of the chilling effect that such
2 inquiries have on the employees' willingness to participate in representational efforts or activities.
3 *See Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977); *NLRB v. Unbelievable, Inc.*, 71 F.3d 1434 (9th
4 Cir. 1995); *NLRB v. Guess?*, 339 NLRB 432 (2003); *Wright Elec., Inc. v. NLRB*, 200 F.3d 1162 (8th
5 Cir. 2000); and *Harvey's Wagon Wheel v. NLRB*, 550 F.2d 1139 (9th Cir. 1976). Allegiant argues,
6 however, that courts have generally rejected the assertion of a specific "NLRA privilege" or "internal
7 union privilege" where the requested information or documents do not implicate the First
8 Amendment right of association of employees or union members. *See Patterson v. Heartland*
9 *Industrial Partners, LLP*, 225 F.R.D. 204, 206-207 (N.D. Ohio 2004); *International Brotherhood of*
10 *Teamsters, Airline Division v. Frontier Airlines*, 2012 WL 1801979, *5-6 (D.Colo. 2012).

11 In this case, the Union has not submitted any declarations from pilots, or AAPAG or Union
12 members, attesting to any previous harassment by Allegiant, or the chilling effect that disclosure of
13 the information and documents sought by Allegiant would have on their participation in collective
14 bargaining activities. Allegiant therefore argues that the Union has not made a *prima facie* showing
15 for application of the privilege. In *Local 491, Police Officers v. Gwinnett County, Ga.*, 510
16 F.Supp.2d 1271, 1295 (N.D.Ga. 2007), the court noted that in *In re Grand Jury Proceedings*, 842
17 F.2d 1229, 1236 (11th Cir. 1988), the Eleventh Circuit suggested that a more lenient showing applies
18 to a targeted governmental investigation of an organization. The court also cited *Pollard v. Roberts*,
19 283 F.Supp. 248, 258 (D.C.Ark. 1968), *aff'd per curiam* 393 U.S. 14, 89 S.Ct. 47 (1968) that a
20 prosecutor's attempt to subpoena the names of contributors to a political campaign was
21 unconstitutional despite no evidence that any individuals had yet been subjected to reprisals on
22 account of the contributions "because it would be naive not to recognize that the disclosure of the
23 identities of contributors to campaign funds would subject at least some of them to potential
24 economic or political reprisals of greater or lesser severity." The court in *Local 491, Police Officers*
25 stated concerns about the economic vulnerabilities of public employees have led courts to more
26 easily find the presence of a chilling effect on the disclosure rules imposed on public employees. In
27 *Patterson v. Heartland Industrial Partners, LLP*, 225 F.R.D. 204, 206 (N.D. Ohio 2004), the union
28 argued that plaintiffs' documents requests would result in the disclosure of the names of union

1 supporters which could potentially result in reprisals against those individuals. The court appeared
2 to recognize that the First Amendment privilege could apply to plaintiff's requests, but did not apply
3 because the plaintiffs had agreed that the names and other identifying information of union
4 supporters could be redacted from any documents produced.

5 This case involves an ongoing dispute relating to the Union's attempts to negotiate a
6 collective bargaining agreement with Allegiant on behalf of its pilots. The Union alleges that
7 Allegiant has repudiated provisions of the Pilot Work Rules in an effort to discredit the Union in the
8 eyes of the pilots. Although Allegiant presumably disputes this allegation, the Court finds that the
9 disclosure of the identities of individual pilots who were or are members or supporters of AAPAG or
10 the Union in the midst of ongoing negotiations between Allegiant and the Union could reasonably
11 have a chilling effect on the pilots' exercise of their associational rights. As in *Patterson*, however,
12 the potential harm to the pilots' associational rights can be avoided by not requiring the production
13 of AAPAG or Union membership lists, or redacting those portions of produced documents that
14 identify individual pilots. If the Union has records showing whether AAPAG required or collected
15 dues from its members, such records can also be redacted so that relevant information regarding the
16 collection of dues is produced without disclosing the identities of the individual pilots or union
17 members. Likewise, minutes of AAPAG meetings which contain information relevant to whether
18 the AAPAG acted in a representative capacity on behalf of the pilots or whether the Pilot Work
19 Rules was a binding agreement, can be produced without disclosing the identities of pilots who were
20 present at or spoke during the meetings.

21 CONCLUSION

22 Allegiant is reasonably entitled to obtain information and documents within the knowledge,
23 possession, custody or control of the Plaintiff that contain statements made by officers or
24 representative of AAPAG, or communications between the officers or representatives of AAPAG
25 and the Union, relating to whether AAPAG was the pilots' collective bargaining representative or
26 whether the Pilot Work Rules was a binding agreement with Allegiant. Allegiant is also entitled to
27 obtain discovery relevant to whether AAPAG conducted itself like a union, such as by collecting
28 dues from its members. Allegiant, however, is not entitled to *carte blanche* discovery of all

1 information and documents relating to the Union's efforts to negotiate a collective bargaining
2 agreement on behalf of the pilots. Nor is Allegiant entitled to obtain identities of Allegiant pilots
3 who were/are members or supporters of AAPAG or the Union. Accordingly,

4 **IT IS HEREBY ORDERED** that Defendants' Motion to Compel Responses to Written
5 Discovery (#97) is **granted** as follows:

6 1. Plaintiff is required to answer Defendant's interrogatories and produce documents
7 responsive to Defendant's requests that are (a) within the knowledge, possession, custody or control
8 of the Plaintiff, and (b) which relate to whether AAPAG was the pilots' collective bargaining
9 representative or whether the Pilot Work Rules was a binding agreement with Allegiant. Such
10 records may reasonably include, but are not necessarily limited to minutes of meetings or
11 communications among AAPAG officers and representatives, or between AAPAG and the Plaintiff,
12 and records relating to the payment of dues by AAPAG members.

13 2. Plaintiff is not required to identify or produce documents which identify Allegiant
14 pilots who were or are members of AAPAG or the Plaintiff Union. Plaintiff may redact the names or
15 other identifying information of individual pilots/AAPAG or Union members that are contained in
16 the records produced to Defendant.

17 3. Plaintiff shall serve supplemental answers to interrogatories or responses to request
18 for production within ten (10) days of the filing of this order.

19 DATED this 12th day of November, 2014.

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22 GEORGE FOLEY, JR.
23 United States Magistrate Judge
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